IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4156 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAIRMAN

Versus

THAKORBHAI KALIDAS BRAHMBHATT

Appearance:

1. Special Civil Application No. 4156 of 1999

MR RA MISHRA for Petitioner No. 1-2

MS MAMTA R VYAS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 13/10/2003

ORAL JUDGEMENT

Heard learned advocate Mr.Popat for learned advocate Mr.Mishra for the petitioners and learned advocate Ms.Mamta Vyas appearing for the respondent.

2. In the present petition, the petitioner has challenged the order passed by the Primary Education Tribunal dated 1st July, 1998 in the application no.81 of 1992 wherein the Tribunal has set aside the earlier order dated 19th April, 1994 in main application no.81 of 1992 and restored the main application and fixed the hearing of the main application on 28th August, 1998.

3. Learned advocate Mr.Popat appearing on behalf of the petitioner has submitted that the application which was filed by the respondent after a period of three years was sufficient ground to dismiss the same, instead the Tribunal had committed error in allowing the application filed by the respondent. He also submitted that the Tribunal has also committed error in giving opportunity to the respondent while restoring the main application, though there was a negligence and carelessness on the part of the respondent. Therefore, he submitted that the present petition is required to be allowed and the order passed by he Tribunal may be set aside.

4. Learned advocate Ms.Vyas appearing on behalf of the respondent submitted that the order passed by the Tribunal is practically right and the Tribunal has rightly examined the issue that the notice which has been issued by the Tribunal on 25th September, 1992 was send through R.P.A.D. on 8.9.1992, but the said envelope has returned back with an endorsement that the respondent has refused to accept the notice issued by the Tribunal. The Tribunal has also considered that the respondent's service was terminated on 18th July, 1989 and there was no stage in between. Therefore, naturally, on 25.09.1992, presence of respondent might not be there in the school and notice was sent to the respondent at the address of the school and, therefore, the respondent has not received such notice and, therefore, considering this aspect, the Tribunal has allowed the application filed by the respondent. Therefore, she submitted that no error has been committed by the Tribunal and, therefore, the petition may be dismissed.

5. I have considered the submissions made by both the learned advocates and have perused the record as well as order passed by the Tribunal. Considering the fact that there is a delay of about more than three years in filing such application for restoration by the respondent, the Tribunal has rightly given reasons that notice which has been issued by the Tribunal for the purpose of final hearing of main application no.81/1992 sent by letter dated 08.09.1992 fixing the date of

hearing on 25.9.1992, to the respondent, which was endorsed by the school authorities refused on 10.09.1992, but the respondent's service was terminated on 18.07.1989, naturally, he might not be present in the school on 10.09.1992. Therefore, notice issued by the Tribunal has not been received by the respondent and, therefore, it is natural that the respondent might not be aware of the date of hearing and on considering that fact the Tribunal has set aside the earlier order dated 19.07.1994 and restored the main application no.81/1992.

6. The Tribunal has rightly given reasons in respect of his conclusion. The relevant records have been examined by the Tribunal and conclusion of the Tribunal based on the said record is correct and for that the Tribunal has not committed any error while passing such order. In my opinion, there is no procedural irregularity committed by the Tribunal. Ultimately, the order, dismissed for default has been set aside by giving opportunity of hearing to the respondent as well as to the petitioner while restoring the main application. Thus, there is no error committed by the Tribunal which requires any interference in the present petition. Accordingly, the present petition is dismissed. Rule is discharged. Interim relief if any, stands vacated. No order as to costs.

[H.K. RATHOD, J.]

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